

CHAPTER 2.3 MINOR CONSTRUCTION

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I. INTRODUCTION

I.A. PURPOSE

This chapter provides the Department's policy on cost limitations, budgetary notifications, funding, cost allocation, and accounting for minor construction projects.

I.B. APPLICABILITY

This policy applies to all Departmental elements and contractors, including the National Nuclear Security Administration (NNSA)¹. This policy applies to all DOE minor construction projects, including those funded by both Defense and non-Defense authorized funds. This policy does not apply to leases of property; land-only acquisitions; purchases of capital assets; or construction performed by DOE and DOE contractors that is wholly funded by sponsors of Strategic Partnership Projects (SPP)².

I.C. DEFINITIONS

I.C.1. Minor Construction Project

As defined in 50 U.S.C. 2743, a minor construction project means any plant project not specifically authorized by law for which the total estimated cost (TEC) does not exceed the minor construction threshold. This policy adopts the definition contained in 50 U.S.C. 2743 for all Departmental elements. Minor construction projects include all projects referred to as General Plant Projects (GPPs); Institutional General Plant Projects (IGPPs); and Accelerator Improvement Projects (AIPs) in other DOE policies, in statute, or in Congressional report language.

I.C.2. Minor Construction Threshold

The minor construction threshold is defined in statute at 50 U.S.C. 2741. The statutory minor construction threshold is currently set at \$30 million by the National Defense Authorization Act for Fiscal Year 2023.

This policy adopts the statutory threshold for all Departmental elements.

I.C.3. Total Estimated Cost

This policy adopts the definition of TEC contained in DOE Order 413.3B , *Program and Project Management for the Acquisition of Capital Assets* (Attachment 2).

As defined by DOE Order 413.3B, the TEC is all engineering design costs (after conceptual design); facility construction costs; and other costs specifically related to those construction efforts.

TEC includes, but is not limited to project, design, and construction management; contract modifications (to include equitable adjustments) resulting in changes to these costs; design;

construction; contingency; contractor support directly related to design and construction; and equipment rental and refurbishment.

Additionally, for assets constructed by DOE contractors, the TEC must be determined in a manner consistent with Cost Accounting Standards as described in Section II.D.2. of this handbook chapter.

II. POLICY AND REQUIREMENTS

II.A. COST LIMITATIONS

- II.A.1. A minor construction project's TEC must not exceed the minor construction threshold.
- II.A.2. The construction design (including architectural and engineering services) in connection with any proposed minor construction project must not exceed \$5 million unless specifically authorized by law³.
- II.A.3. A minor construction project must have a clear project definition, be complete, and fulfill the intended need without additional expenditures. Minor construction projects must not be incremental segments of larger projects or other minor construction projects.
- II.A.4. If anticipated cost increases will cause the TEC of an approved minor construction project to exceed the minor construction threshold:
 - II.A.4.i. Contractors must immediately notify the Contracting Officer and the responsible Federal Program Official(s) of the anticipated cost increase, and
 - II.A.4.ii. Additional work that would exceed the minor construction threshold must be deferred until additional funding is obtained. The cognizant program office will coordinate required notifications⁴ and any necessary requests for additional funding with OCFO Budget.

II.B. NOTIFICATION OF MINOR CONSTRUCTION PROJECTS

II.B.1. General Notification Requirements

DOE must notify Congress of a minor construction project with a TEC greater than \$5 million and wait 15 days (30 days for a project constructed at a non-DOE installation⁵) before approval to start construction⁶ (equivalent to Critical Decision Point 1, or CD-1).⁷

See Section II.B.2 for additional specific requirements for in-cycle notifications (through the annual budget request) and Section II.B.3 for additional requirements for out-of-cycle notifications.

II.B.2. In-Cycle Notification

DOE provides in-cycle notifications of minor construction projects to Congress via the annual Congressional Budget Request. This

process satisfies statutory notification requirements of 50 U.S.C. 2743(d) and the separate requirement for an annual report required by 50 U.S.C. 2743(b). Projects exceeding the \$5M TEC threshold that are not contained in the in-cycle notice through the annual budget request require out-of-cycle notification before the project is started.

II.B.3. Out-of-Cycle Notification

All Out-of-Cycle notices must be provided to the OCFO Office of Budget.

OCFO Budget will review the minor construction project out-of-cycle notification and provide applicable follow-up questions within five (5) business days of receipt. OCFO Budget will notify Congress and OMB as appropriate⁸.

II.B.4. Cost Growth Notification

To maintain flexibilities Congress has granted; avoid OMB restrictions on apportionments and/or the budget process; and provide OCFO information to support Departmental financial management, the cognizant program office will:

- II.B.4.i. For minor construction projects with an original TEC below \$5 million but with a revised TEC in excess of \$5 million that were not previously identified in the Department's annual budget request, the cognizant program office must notify OCFO Budget. OCFO Budget will provide any required reporting⁹ to Congress and the Office of Management and Budget (OMB). NNSA will report cost growth through their regular semiannual reporting cycle, with copy to CFO Budget.
- II.B.4.ii. For minor construction projects with an original TEC below \$10 million, provide a quarterly report to OCFO Budget of those minor construction projects of which the TEC subsequently exceeded \$10 million during the quarter. NNSA will report cost growth through their regular semiannual reporting cycle, with copy to CFO Budget.
- II.B.4.iii. For each minor construction project with a revised TEC that exceeds the minor construction threshold, provide to OCFO Budget a report explaining the reasons for the cost variation. Notification to OCFO Budget must be provided within 10 business days of developing the revised TEC, in order to meet the requirements for immediate notification contained in 50 U.S.C. 2743. OCFO Budget will then coordinate to provide the required cost variation reporting to Congressional committees.¹⁰

II.B.5. Implementing Increases to the Minor Construction Threshold

The statutory minor construction threshold was increased from \$25 million to \$30 million on 12/23/22 by the National Defense Authorization Act for Fiscal Year 2023.¹¹

The increased statutory threshold may be applied to projects only with appropriate Congressional and OMB notification. Departmental Elements must coordinate with OCFO Budget to provide an out-of-cycle notification for projects with a TEC exceeding \$25 million, but less than \$30 million, for which in-cycle or out-of-cycle notification was originally provided prior to 12/23/22, including through the FY 2023 Congressional Budget Request.

There is no requirement to stop work pending issuance of the out-of-cycle notice.

II.C. MINOR CONSTRUCTION PROJECT FUNDING

Consistent with the Full Funding principle of budgeting for capital asset acquisitions contained in the Capital Programming Guide (OMB Circular A-11 Supplement) and Section 31.4 of OMB Circular A-11, DOE should specify budget authority sufficient to complete a useful segment of a project (or the entire project, if it is not divisible into useful segments).¹² Planning segments should be financed separately from the procurement of a useful asset.¹³ Exceptions to the budgeting requirements in the Capital Programming Guide and A-11 must be approved by OMB on a project-specific basis; requests for OMB approval of multi-year funding will be transmitted through OCFO.

Projects should comply with both the requirements of the Capital Programming Guide and Cost Accounting Standards. If the project will not be funded by one DOE appropriation but will be allocated to multiple funding sources in a manner compliant with Cost Accounting Standards, the project notification (either the budget request or the out of cycle notification) should clearly indicate that the project is institutional (and thus project costs are allocated indirectly).

II.D. COST ACCOUNTING REQUIREMENTS FOR MINOR CONSTRUCTION PROJECTS

II.D.1. Direct Funded Minor Construction Projects

Assign the cost of minor construction projects to the applicable final cost objective.

II.D.2. Indirect Minor Construction Projects

II.D.2.i. Use applicable Cost Accounting Standards (CAS) and CFO guidance contained in Chapter 15.1 of the Financial Management Handbook for minor construction projects that are allocated through indirect rates.

Applicable standards include:

- CAS 401, Consistency in Estimating, Accumulating, and Reporting Costs

- CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose
 - CAS 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives
 - CAS 418, Allocation of Direct and Indirect Costs
- II.D.2.ii. Allocate the cost of minor construction projects that are for the general management and administration of a business unit as a whole in accordance with CAS 410 (48 CFR 9904.410) and the contractor's approved CAS Disclosure Statement.
- II.D.2.iii. Allocate the cost of other indirect minor construction projects to the benefitting programs in accordance with CAS 418 (48 CFR 9904.418) and the contractor's approved CAS Disclosure Statement.
- II.D.2.iv. The contractor's CAS Disclosure Statement must clearly identify the contractor's cost allocation practices and consistently apply those practices for all costs that are incurred for the same purpose and in like circumstances.
- The contractor must set forth in the CAS Disclosure Statement the specific criteria and circumstances for making distinctions between the types of costs that are accounted for as direct in some circumstances and as indirect in other circumstances.

II.E. OTHER REQUIREMENTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS

II.E.1. Accounting Requirements

The *DOE Financial Management Handbook* (FMH) Chapter 10, "Accounting for Property, Plant, and Equipment," provides the accounting requirements for real property. Minor construction projects shall be accounted for in a manner consistent with other real property and shall follow current accounting policy for capital assets.

II.E.2. Property Accountability Requirements

Real Property Management are in DOE Order 430.1C, "Real Property Asset Management." DOE Order 430.1C, Section 4.b.(1)(b) requires DOE elements to record all planned real property acquisitions in real property planning documentation and in the Facilities Information Management System (FIMS) Anticipated Asset Information Module (AAIM), regardless of acquisition method or funding source.

II.E.3. Project Management Requirements

Project Management requirements are in DOE Order 413.3B,

“Program and Project Management for the Acquisition of Capital Assets.” As specified in Section 3.a. of DOE Order 413.3B, the project management principles outlined in Appendix C of DOE Order 413.3B apply to minor construction projects.

III. NONCOMPLIANCE WITH THIS POLICY

Noncompliance with this chapter could result in increased control by OMB and/or Congress on the authorities to carry out minor construction projects. Noncompliance with legal requirements referenced in this policy could result in violations of the Anti-Deficiency Act (31 U.S.C. §§ 1341(a)(1)(A), 1341(a)(1)(B); and 1342, 1517(a)).

Additional information and reporting requirements of the Anti-Deficiency Act are in the DOE FMH Chapter 2, “Administrative Control of Funds”; OMB Circular A-11, Section 150, “Administrative Control of Funds”; and OMB Circular A-123, “Management’s Responsibility for Enterprise Risk Management and Internal Control.”

IV. REFERENCES

- IV.A. 42 USC 7252, 7257, Sections 642 and 647 of the *DOE Organization Act*, which authorizes the Secretary to delegate authorities to others and authorizes the Secretary to acquire facilities and personal property.
- IV.B. 50 USC 2741, *Title 50 War and National Defense, Definitions*, defines the current statutory minor construction threshold applicable to funds authorized by a DOE national security authorization.
- IV.C. PL 117-263, Section 3113 of the *FY 2023 National Defense Authorization Act*, set the minor construction threshold at \$30 million.
- IV.D. 42 USC 5821(b)(2), *Annual Authorization Acts*, requires a 30-day advance notification to Congress prior to the use of funds for a facility constructed not on DOE facility with an estimated cost exceeding \$5 million.
- IV.E. Additional references are cited in this chapter as appropriate.

¹ DOE Order 520.1B, *Financial Management and Chief Financial Officer Responsibilities*

² DOE Order 481.1E, *Strategic Partnership Projects*, Section 4.g.(3).

³ 50 U.S.C. 2746(b), *Title 50 War and National Defense, Conceptual and construction design*

⁴ 50 U.S.C. 2743, *Title 50 War and National Defense, Minor Construction Projects*

⁵ 42 U.S.C. 5821

⁶ The content of the notification shall satisfy the statutory notification requirements contained in 50 U.S.C. 2743(d) (which applies to Defense facilities), and 42 U.S.C. 5821(b)(2) (which applies to research facilities constructed not on a DOE facility). Both requirements may apply to a specific project. Notifications must contain the TEC of the facility and describe the nature and purpose of the facility.

Although Congress does not require notification of non-defense minor construction projects on a DOE installation, the OCFO applies the \$5 million threshold for all minor construction projects.

⁷ Applicable definitions of project management critical decision points contained in DOE Order 413.3B.

⁸ P.L. 111-84, div. C, Section 3118(c) and 42 U.S.C. 5821

⁹ 50 U.S.C. 2743 and 42 U.S.C. 5821

¹⁰ 50 U.S.C. 2743 requires cost variation reporting to Congressional committees.

¹¹ P.L. 117-263

¹² See Principle 1 under the Principles of Financing, Section I.7.2.2 of the Capital Programming Guide. Note that the total of all segments of a minor construction project must not exceed the minor construction threshold.

¹³ See Principle 3 under the Principles of Financing, Section I.7.2.2 of the Capital Programming Guide.